UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

CONNECTICUT LIGHT AND POWER COMPANY d/b/a EVERSOURCE ENERGY

And **Case 01–CA–169804**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 420

John McGrath Esq. and *Charlotte Davis Esq*.,
for the General Counsel.
Ronald S. Allen Esq., for the
Respondent.

Decision

Statement of the Case

RAYMOND P. GREEN, Administrative Law Judge. I heard this case on September 7 and 8, 2016, in Hartford, Connecticut. The charge was filed on February 17, 2016, and the complaint was issued on May 31, 2016. In substance the complaint alleged that the Respondent during the course of bargaining either refused to furnish relevant information to the Union or that it failed to timely furnish information or that it furnished incomplete information. [1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs, I make the following

Findings and Conclusions

I. Jurisdiction

It is admitted and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. The alleged unfair labor practices

The Respondent is an electrical utility operating in the State of Connecticut. It has had a longstanding collective-bargaining relationship with two separate locals of the International

[1] At the outset of the trial, the Respondent offered to settle all of the complaint's allegations except for one contention regarding its alleged failure to provide its cost of using contractors to perform certain work. As to this allegation, the Respondent argued that its agreements with the Union permitted it to engage in such subcontracting and that this was proprietary and confidential information. It also argued that the information requested was not relevant to the issues that were the subject of collective bargaining. The General Counsel refused to accept a partial settlement and so this resulted in the litigation of issues that otherwise were not contested.

Brotherhood of Electrical Workers. These are Local 457 and Local 420, the latter being the charging party in this case. In this respect, the Company has until recently, negotiated and maintained separate collective-bargaining agreements with each Local union. They are called the Green Book and the Blue Book.

Notwithstanding the existence of separate bargaining units, the Company and the Unions have typically engaged in joint negotiations and the outcome has been that the agreements have had a great deal of overlap in their respective contractual provisions.

Both contracts contained a classification referred to as "trouble shooters." These are typically linemen who are called upon to respond to emergencies such as blackouts. During the 2012 negotiations involving both locals, the company sought to create via bargaining, a new organization that would encompass all "trouble shooters" in one division so that assignments and work could be done more efficiently. For whatever reason, the parties could not agree. This issue was again raised by the Employer during 2014 without success.

For reasons not wholly understood by me, the number of people who could do this work declined over a period of time. And during the period after May or June 2014, the Company began to use a subcontractor called Asplundh for trouble shooting work done primarily during the night shift. There is no contention that the utilization of this contractor was a violation of the collective-bargaining agreement or that it represented an unlawful unilateral change in working conditions. The result was that for the next 2-1/2 years, people, mostly linemen, employed by Asplundh were assigned to do a significant amount of the trouble shooting work. The evidence also suggests that using Asplundh to do this work was more costly than it otherwise would have been if the Respondent's own employees were assigned to the work.

Negotiations for new contracts were set to begin on December 10, 2015. In this set of negotiations, the Company indicated that it wanted to consolidate the two collective-bargaining agreements into a single contract. It also indicated that it wanted to create a new classification to be called a "response specialist." As to the latter, the Company proposed that this new position be centralized into a single company wide division that would do similar but expanded types of work that had previously been done by the troubleshooters. The Unions were notified that the Company's intention was to thereby reduce the amount of work that had been contracted to Asplundh. It also appears that during negotiations, the Company asserted that the cost of doing business with Asplundh was excessive. In any event, there was never any contention made by the Company that its use of Asplundh was in order to save on labor costs.

In preparation for the commencement of negotiations, the unions sent two information requests to the Respondent, respectively on December 7 and 8, 2015.

On December 7, 2015, the unions requested the following information.

> Please provide fourteen copies for each Local, for each contract, the following information for 2016 Eversource Negotiations:
>
> 1. Contractor lists for period June 1, 2013 to present.
> 2. Address list for bargaining unit employees.
> 3. 2013, 2014, and 2015 Fringe Benefit Breakdown.
> 4. Straight-time hourly rate and 1% of annual pay
> 5. Expense plan breakdown 2013-2014.
> 6. Shift premium cost and Summary Premium cost 2013-2015.

7. Number of meals and Summary Premium cost 2013-2015.
8. List of all employees currently on special rates – Article V/Red Circle (Blue).
9. Current working schedules.

Thereafter, on December 9, the following information request was made.

> Please provide fourteen copies for each Local, for each contract, the following information for 2016 Eversource negotiations:
>
> 1. All contractor hours and costs (dollars) of any and all contractors used to perform the work for the following classifications for the years, 2012, 2013, 2014, 2015 and once 2016 begins, keep the information updated on an end of month cycle:
>
> a) Troubleshooters
> b) Linemen (including Transmission Linemen)
> c) Electricians (including General Operating)
> d) Meter service
> e) Storeroom
> f) Building Maintenance/Janitorial
>
> 2. The names of all contractors mentioned above.
> 3. Organizational Charts.
> 4. Present Job Descriptions.
> 5. All manpower requests for 2012, 2013, 2014 and 2015 (PVRs).

On February 1, 2016, the Unions sent another letter stating as follows:

> This is my official second request for contractor information. Please provide the hours and dollars and separate the Troubleshooters. The Union needs this information so we can proceed with wage and benefit proposals.

It is conceded by the Respondent that in some cases it failed to provide the information that was requested. It is acknowledged that the Respondent did not provide job classifications, current shift schedules, fringe benefit breakdowns, personal vacancy requests, and a list of employees on special rates. The Respondent further concedes that it did not provide a complete set of organizational charts, a complete list of outside contractors, and a complete set of job descriptions. In addition, in some cases, such as job descriptions, the Respondent did not furnish these until about 4 months after the Union's request.

There is no dispute that the Respondent has refused to furnish the information regarding its costs of subcontracting.

Discussion

At footnote 1 of its Brief the Respondent states that it "does not dispute that all other information requested by the Union, except for the third-party contractor information, is presumptively relevant and should have been provided in due course."

Since the Respondent acknowledges that apart from contractor cost information, the Union's request was for information that was presumptively relevant and the further concession that such information was either not furnished, was partially furnished or was furnished late, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act.

The only remaining question is whether the request for contractor cost information was relevant to the bargaining process and/or was either confidential or not.

In my opinion, information regarding subcontracting is not presumptively relevant and the General Counsel is therefore required to make a showing that the information is relevant for either collective bargaining or for contract administration purposes. *Sho-Me Power Electric Corp*., 360 NLRB No. 53 (2014). For example, in *Postal Service*, 352 NLRB 1032 (2008), the Board adopted the opinion of the administrative law judge who stated:

> It is well established that "subcontracting information . . . is not presumptively relevant and therefore a union seeking such information must demonstrate its relevance." *Ingham Regional Medical Center*, 342 NLRB 1259, 1262 (2004), citing *Sunrise Health & Rehabilitation Center*, 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete*, supra.

Where contract negotiations involve the subject of subcontracting, the names of subcontractors and the amount of bargaining unit work they are doing, would obviously be relevant. (And in this case, that information was mostly given). Nonetheless, that does not mean that information relating to the cost of subcontracting would be relevant if the employer is not contending that their use would save on labor costs or that the employer could not afford to utilize its own employees to do the work in question. *Disneyland Park*, 350 NLRB 1256 (2007).

In the present case the Union's witness asserted that the subcontractor cost information was sought because the Employer was proposing a new job classification of response apecialists. He asserted that having the cost information would therefore allow the Union to formulate a wage scale proposal for this new position.

In my opinion, this assertion does not follow for a number of reasons. First, the proposal calling for the creation of response specialists related only to the Company's use of Asplundh which was the contractor that was doing trouble-shooting work. The cost of other contractors has simply nothing to do with the issue that was being discussed in the negotiations. Second, even if the company furnished the Union with its costs of doing business with Asplundh this would not disclose what wages and benefits are received by Asplundh's employees. So in that respect, the cost information would be of no use in formulating a wage and benefit scale for the new job classification. Finally, the fact is that the employees of Asplundh are represented by a sister local of the IBEW and the Charging Party, through communications with that local union, was in a better position to know the wage and benefit level of Asplundh's employees than the Respondent.

In addition, the General Counsel contends that the contractor cost information was necessary because when the response specialist positions were created, that information would be useful because the Company had asserted that it would seek to measure the performance of this new category of employees and could discontinue the program if they did not measure up. But at no time did the Company assert that the defined performance criteria, (which was discussed with the Union before implementation), would be measured by comparing the cost of using its own employees to the cost of using Asplundh. That simply was not one of the criteria expressed or defined.

Accordingly, I conclude that the Respondent did not violate the Act when it refused to furnish the subcontractor cost information that was requested.

CONCLUSIONS OF LAW

1. By refusing to furnish to International Brotherhood of Electrical Workers, Local 420, certain information requested during contract negotiations in 2015 and 2016, the Respondent has violated Section 8(a)(1) and (5) of the Act.

2. By refusing to furnish contractor cost information during contract negotiations, the Respondent has not violated the Act.

3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The parties, even without all of the information requested, still managed to complete and sign a collective-bargaining agreement. Therefore, it could be argued that there is no further need for this information at this time. Nevertheless, as I have concluded that the Company violated the Act by refusing to furnish information, I shall recommend that it furnish this information if requested to do so by the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [2]

ORDER

The Respondent, Connecticut Light and Power Company d/b/a Eversource Energy, [inset city, state of Respondent's location] its officers, agents, successor, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to respond

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

appropriately to information requests made by the Union.

(b) In any like or related manner interferewith, restrain, or coerce employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, furnish to the Union the information requested in the letters sent by the Union dated December 7 and 8, 2015, except for contractor cost information.

(b) Within 14 days after service by the Region, post at its Connecticut facilities, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 7, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

Dated, Washington, D.C. October 25, 2016

Raymond P. Green
Administrative Law Judge

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to furnish relevant information to International Brotherhood of Electrical Workers, Local 420.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of their Section 7 rights.

WE WILL upon request, furnish to the Union the information requested on December 7 and 8, 2015, except for the cost of contracting.

Connecticut Light and Power Company d/b/a Eversource Energy
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

A.A. Ribicoff Federal Building and Courthouse,
450 Main Street, Suite 410,
Hartford, CT 06103-3022 860-240-3004

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/01-CA-169804 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3524.